

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 399

Introduced by Senator Yee
(Principal coauthor: Senator Romero)
(Coauthor: Senator Steinberg)
~~(Coauthor: Assembly Member Fuentes)~~
(Coauthors: Assembly Members Fuentes and Hill)

February 26, 2009

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings or both may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and

resentencing to the sentencing court, and to the prosecuting agency, as specified. The bill would establish certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. The bill would require the court to hold a hearing if the court finds that the defendant's statement is true, as specified. The bill would apply retroactively, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment

1 in the state prison of any specification of three time periods, the
2 court shall sentence the defendant to one of the terms of
3 imprisonment specified unless the convicted person is given any
4 other disposition provided by law, including a fine, jail, probation,
5 or the suspension of imposition or execution of sentence or is
6 sentenced pursuant to subdivision (b) of Section 1168 because he
7 or she had committed his or her crime prior to July 1, 1977. In
8 sentencing the convicted person, the court shall apply the
9 sentencing rules of the Judicial Council. The court, unless it
10 determines that there are circumstances in mitigation of the
11 punishment prescribed, shall also impose any other term that it is
12 required by law to impose as an additional term. Nothing in this
13 article shall affect any provision of law that imposes the death
14 penalty, that authorizes or restricts the granting of probation or
15 suspending the execution or imposition of sentence, or expressly
16 provides for imprisonment in the state prison for life, except as
17 provided in subdivision (e). In any case in which the amount of
18 preimprisonment credit under Section 2900.5 or any other provision
19 of law is equal to or exceeds any sentence imposed pursuant to
20 this chapter, the entire sentence shall be deemed to have been
21 served and the defendant shall not be actually delivered to the
22 custody of the secretary. The court shall advise the defendant that
23 he or she shall serve a period of parole and order the defendant to
24 report to the parole office closest to the defendant's last legal
25 residence, unless the in-custody credits equal the total sentence,
26 including both confinement time and the period of parole. The
27 sentence shall be deemed a separate prior prison term under Section
28 667.5, and a copy of the judgment and other necessary
29 documentation shall be forwarded to the secretary.

30 (b) When a judgment of imprisonment is to be imposed and the
31 statute specifies three possible terms, the choice of the appropriate
32 term shall rest within the sound discretion of the court. At least
33 four days prior to the time set for imposition of judgment, either
34 party or the victim, or the family of the victim if the victim is
35 deceased, may submit a statement in aggravation or mitigation. In
36 determining the appropriate term, the court may consider the record
37 in the case, the probation officer's report, other reports including
38 reports received pursuant to Section 1203.03 and statements in
39 aggravation or mitigation submitted by the prosecution, the
40 defendant, or the victim, or the family of the victim if the victim

1 is deceased, and any further evidence introduced at the sentencing
2 hearing. The court shall select the term which, in the court's
3 discretion, best serves the interests of justice. The court shall set
4 forth on the record the reasons for imposing the term selected and
5 the court may not impose an upper term by using the fact of any
6 enhancement upon which sentence is imposed under any provision
7 of law. A term of imprisonment shall not be specified if imposition
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on
10 the record at the time of sentencing. The court shall also inform
11 the defendant that as part of the sentence after expiration of the
12 term he or she may be on parole for a period as provided in Section
13 3000.

14 (d) When a defendant subject to this section or subdivision (b)
15 of Section 1168 has been sentenced to be imprisoned in the state
16 prison and has been committed to the custody of the secretary, the
17 court may, within 120 days of the date of commitment on its own
18 motion, or at any time upon the recommendation of the secretary
19 or the Board of Parole Hearings, recall the sentence and
20 commitment previously ordered and resentence the defendant in
21 the same manner as if he or she had not previously been sentenced,
22 provided the new sentence, if any, is no greater than the initial
23 sentence. The court resentencing under this subdivision shall apply
24 the sentencing rules of the Judicial Council so as to eliminate
25 disparity of sentences and to promote uniformity of sentencing.
26 Credit shall be given for time served.

27 (e) (1) When a defendant who was under 18 years of age at the
28 time of the commission of the offense for which the defendant was
29 sentenced to imprisonment for life without the possibility of parole
30 has served at least 10 years of that sentence, the defendant may
31 submit to the sentencing court a petition for recall and resentencing,
32 provided that defendants who have served ~~10 or more years~~ *but*
33 *not more than 15* years as of January 1, ~~2010~~ *2011*, shall not be
34 permitted to submit a petition for recall and resentencing pursuant
35 to this subdivision until they have served 15 years. Defendants
36 who have served 15 or more years but less than 25 years as of
37 January 1, ~~2010~~ *2011*, shall be permitted to submit a petition for
38 recall and resentencing as follows:

39 (A) Those defendants who entered custody prior to July 1, 1993,
40 may submit a petition in ~~2010~~ *2011*.

1 (B) Those defendants who entered custody on or after July 1,
2 1993, but prior to January 1, 1994, may submit a petition in ~~2011~~
3 ~~2012~~.

4 (C) Those defendants who entered custody on or after January
5 1, 1994, but prior to July 1, 1994, may submit a petition in ~~2012~~
6 ~~2013~~.

7 (D) Those defendants who entered custody on or after July 1,
8 1994, but prior to January 1, ~~1995~~ 1996, may submit a petition in
9 ~~2013~~ 2014.

10 (2) The defendant shall file the original petition with the
11 sentencing court. A copy of the petition shall be served on the
12 agency that prosecuted the case. The petition shall include the
13 defendant's statement that he or she was under 18 years of age at
14 the time of the crime, was sentenced to life in prison without the
15 possibility of parole, and that one of the following is true:

16 (A) The defendant was convicted pursuant to felony murder or
17 aiding and abetting murder provisions of law.

18 (B) The defendant does not have juvenile felony adjudications
19 for assault or other felony crimes with a significant potential for
20 personal harm to victims prior to the offense for which the sentence
21 is being considered for recall.

22 (C) The defendant committed the offense with at least one adult
23 codefendant.

24 (D) The defendant has performed acts that tend to indicate
25 rehabilitation or the potential for rehabilitation, including, but not
26 limited to, availing himself or herself of rehabilitative, educational,
27 or vocational programs, if those programs have been available at
28 his or her classification level and facility, using self-study for
29 self-improvement, or showing evidence of remorse.

30 (3) If any of the information required in paragraph (2) is missing
31 from the petition, or if proof of service on the prosecuting agency
32 is not provided, the court shall return the petition to the defendant
33 and advise the defendant that the matter cannot be considered
34 without the missing information. *The defendant may resubmit a*
35 *petition with the information or proof of service.*

36 (4) A reply to the petition, if any, shall be filed with the court
37 within 60 days of the date on which the prosecuting agency was
38 served with the petition, unless a continuance is granted for good
39 cause.

(5) If the court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider whether to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the ~~rights~~ *right* to participate in the hearing.

(6) The factors that the court may consider when determining whether to recall and resentence include, but are not limited to, the following:

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall.

(C) The defendant committed the offense with at least one adult codefendant.

(D) Prior to the offense for which the sentence is being considered for recall, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

(E) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

(G) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.

(H) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

(7) The court shall have the discretion to recall the sentence and commitment previously ordered and to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria in paragraph~~(2)~~ (6). Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing.

(8) If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 15 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

(9) In addition to the criteria in paragraph~~(2)~~ (6), the court may consider any other criteria that the court deems relevant to its decision, so long as the court identifies them on the record, provides a statement of reasons for adopting them, and states why the defendant does or does not satisfy the criteria.

(10) This subdivision shall have retroactive application.

(f) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the secretary or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraph (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

1 (C) The prisoner is permanently medically incapacitated with
2 a medical condition that renders him or her permanently unable
3 to perform activities of basic daily living, and results in the prisoner
4 requiring 24-hour total care, including, but not limited to, coma,
5 persistent vegetative state, brain death, ventilator-dependency, loss
6 of control of muscular or neurological function, and that
7 incapacitation did not exist at the time of the original sentencing.

8 The Board of Parole Hearings shall make findings pursuant to
9 this subdivision before making a recommendation for resentence
10 or recall to the court. This subdivision does not apply to a prisoner
11 sentenced to death or a term of life without the possibility of parole.

12 (3) Within 10 days of receipt of a positive recommendation by
13 the secretary or the board, the court shall hold a hearing to consider
14 whether the prisoner's sentence should be recalled.

15 (4) Any physician employed by the department who determines
16 that a prisoner has six months or less to live shall notify the chief
17 medical officer of the prognosis. If the chief medical officer
18 concurs with the prognosis, he or she shall notify the warden.
19 Within 48 hours of receiving notification, the warden or the
20 warden's representative shall notify the prisoner of the recall and
21 resentencing procedures, and shall arrange for the prisoner to
22 designate a family member or other outside agent to be notified
23 as to the prisoner's medical condition and prognosis, and as to the
24 recall and resentencing procedures. If the inmate is deemed
25 mentally unfit, the warden or the warden's representative shall
26 contact the inmate's emergency contact and provide the information
27 described in paragraph (2).

28 (5) The warden or the warden's representative shall provide the
29 prisoner and his or her family member, agent, or emergency
30 contact, as described in paragraph (4), updated information
31 throughout the recall and resentencing process with regard to the
32 prisoner's medical condition and the status of the prisoner's recall
33 and resentencing proceedings.

34 (6) Notwithstanding any other provisions of this section, the
35 prisoner or his or her family member or designee may
36 independently request consideration for recall and resentencing
37 by contacting the chief medical officer at the prison or the
38 secretary. Upon receipt of the request, the chief medical officer
39 and the warden or the warden's representative shall follow the
40 procedures described in paragraph (4). If the secretary determines

1 that the prisoner satisfies the criteria set forth in paragraph (2), the
2 secretary or board may recommend to the court that the prisoner's
3 sentence be recalled. The secretary shall submit a recommendation
4 for release within 30 days in the case of inmates sentenced to
5 determinate terms and, in the case of inmates sentenced to
6 indeterminate terms, the secretary shall make a recommendation
7 to the Board of Parole Hearings with respect to the inmates who
8 have applied under this section. The board shall consider this
9 information and make an independent judgment pursuant to
10 paragraph (2) and make findings related thereto before rejecting
11 the request or making a recommendation to the court. This action
12 shall be taken at the next lawfully noticed board meeting.

13 (7) Any recommendation for recall submitted to the court by
14 the secretary or the Board of Parole Hearings shall include one or
15 more medical evaluations, a postrelease plan, and findings pursuant
16 to paragraph (2).

17 (8) If possible, the matter shall be heard before the same judge
18 of the court who sentenced the prisoner.

19 (9) If the court grants the recall and resentencing application,
20 the prisoner shall be released by the department within 48 hours
21 of receipt of the court's order, unless a longer time period is agreed
22 to by the inmate. At the time of release, the warden or the warden's
23 representative shall ensure that the prisoner has each of the
24 following in his or her possession: a discharge medical summary,
25 full medical records, state identification, parole medications, and
26 all property belonging to the prisoner. After discharge, any
27 additional records shall be sent to the prisoner's forwarding
28 address.

29 (10) The secretary shall issue a directive to medical and
30 correctional staff employed by the department that details the
31 guidelines and procedures for initiating a recall and resentencing
32 procedure. The directive shall clearly state that any prisoner who
33 is given a prognosis of six months or less to live is eligible for
34 recall and resentencing consideration, and that recall and
35 resentencing procedures shall be initiated upon that prognosis.

36 (g) Any sentence imposed under this article shall be subject to
37 the provisions of Sections 3000 and 3057 and any other applicable
38 provisions of law.

1 (h) A sentence to state prison for a determinate term for which
2 only one term is specified, is a sentence to state prison under this
3 section.

4 (i) This section shall remain in effect only until January 1, 2011,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before that date, deletes or extends that date.

7 SEC. 2. Section 1170 of the Penal Code, as amended by Section
8 2 of Chapter 416 of the Statutes of 2008, is amended to read:

9 1170. (a) (1) The Legislature finds and declares that the
10 purpose of imprisonment for crime is punishment. This purpose
11 is best served by terms proportionate to the seriousness of the
12 offense with provision for uniformity in the sentences of offenders
13 committing the same offense under similar circumstances. The
14 Legislature further finds and declares that the elimination of
15 disparity and the provision of uniformity of sentences can best be
16 achieved by determinate sentences fixed by statute in proportion
17 to the seriousness of the offense as determined by the Legislature
18 to be imposed by the court with specified discretion.

19 (2) Notwithstanding paragraph (1), the Legislature further finds
20 and declares that programs should be available for inmates,
21 including, but not limited to, educational programs, that are
22 designed to prepare nonviolent felony offenders for successful
23 reentry into the community. The Legislature encourages the
24 development of policies and programs designed to educate and
25 rehabilitate nonviolent felony offenders. In implementing this
26 section, the Department of Corrections and Rehabilitation is
27 encouraged to give priority enrollment in programs to promote
28 successful return to the community to an inmate with a short
29 remaining term of commitment and a release date that would allow
30 him or her adequate time to complete the program.

31 (3) In any case in which the punishment prescribed by statute
32 for a person convicted of a public offense is a term of imprisonment
33 in the state prison of any specification of three time periods, the
34 court shall sentence the defendant to one of the terms of
35 imprisonment specified unless the convicted person is given any
36 other disposition provided by law, including a fine, jail, probation,
37 or the suspension of imposition or execution of sentence or is
38 sentenced pursuant to subdivision (b) of Section 1168 because he
39 or she had committed his or her crime prior to July 1, 1977. In
40 sentencing the convicted person, the court shall apply the

1 sentencing rules of the Judicial Council. The court, unless it
2 determines that there are circumstances in mitigation of the
3 punishment prescribed, shall also impose any other term that it is
4 required by law to impose as an additional term. Nothing in this
5 article shall affect any provision of law that imposes the death
6 penalty, that authorizes or restricts the granting of probation or
7 suspending the execution or imposition of sentence, or expressly
8 provides for imprisonment in the state prison for life, except as
9 provided in subdivision (e). In any case in which the amount of
10 preimprisonment credit under Section 2900.5 or any other provision
11 of law is equal to or exceeds any sentence imposed pursuant to
12 this chapter, the entire sentence shall be deemed to have been
13 served and the defendant shall not be actually delivered to the
14 custody of the secretary. The court shall advise the defendant that
15 he or she shall serve a period of parole and order the defendant to
16 report to the parole office closest to the defendant's last legal
17 residence, unless the in-custody credits equal the total sentence,
18 including both confinement time and the period of parole. The
19 sentence shall be deemed a separate prior prison term under Section
20 667.5, and a copy of the judgment and other necessary
21 documentation shall be forwarded to the secretary.

22 (b) When a judgment of imprisonment is to be imposed and the
23 statute specifies three possible terms, the court shall order
24 imposition of the middle term, unless there are circumstances in
25 aggravation or mitigation of the crime. At least four days prior to
26 the time set for imposition of judgment, either party or the victim,
27 or the family of the victim if the victim is deceased, may submit
28 a statement in aggravation or mitigation to dispute facts in the
29 record or the probation officer's report, or to present additional
30 facts. In determining whether there are circumstances that justify
31 imposition of the upper or lower term, the court may consider the
32 record in the case, the probation officer's report, other reports
33 including reports received pursuant to Section 1203.03 and
34 statements in aggravation or mitigation submitted by the
35 prosecution, the defendant, or the victim, or the family of the victim
36 if the victim is deceased, and any further evidence introduced at
37 the sentencing hearing. The court shall set forth on the record the
38 facts and reasons for imposing the upper or lower term. The court
39 may not impose an upper term by using the fact of any
40 enhancement upon which sentence is imposed under any provision

1 of law. A term of imprisonment shall not be specified if imposition
2 of sentence is suspended.

3 (c) The court shall state the reasons for its sentence choice on
4 the record at the time of sentencing. The court shall also inform
5 the defendant that as part of the sentence after expiration of the
6 term he or she may be on parole for a period as provided in Section
7 3000.

8 (d) When a defendant subject to this section or subdivision (b)
9 of Section 1168 has been sentenced to be imprisoned in the state
10 prison and has been committed to the custody of the secretary, the
11 court may, within 120 days of the date of commitment on its own
12 motion, or at any time upon the recommendation of the secretary
13 or the Board of Parole Hearings, recall the sentence and
14 commitment previously ordered and resentence the defendant in
15 the same manner as if he or she had not previously been sentenced,
16 provided the new sentence, if any, is no greater than the initial
17 sentence. The court resentencing under this subdivision shall apply
18 the sentencing rules of the Judicial Council so as to eliminate
19 disparity of sentences and to promote uniformity of sentencing.
20 Credit shall be given for time served.

21 (e) (1) When a defendant who was under 18 years of age at the
22 time of the commission of the offense for which the defendant was
23 sentenced to imprisonment for life without the possibility of parole
24 has served at least 10 years of that sentence, the defendant may
25 submit to the sentencing court a petition for recall and resentencing,
26 provided that defendants who have served 10 or more years as of
27 January 1, 2010, shall not be permitted to submit a petition for
28 recall and resentencing pursuant to this subdivision until they have
29 served 15 years. Defendants who have served 15 or more years
30 but less than 25 years as of January 1, 2010, shall be permitted to
31 submit a petition for recall and resentencing as follows:

32 (A) Those defendants who entered custody prior to July 1, 1993,
33 may submit a petition in 2010.

34 (B) Those defendants who entered custody on or after July 1,
35 1993, but prior to January 1, 1994, may submit a petition in 2011.

36 (C) Those defendants who entered custody on or after January
37 1, 1994, but prior to July 1, 1994, may submit a petition in 2012.

38 (D) Those defendants who entered custody on or after July 1,
39 1994, but prior to January 1, 1995, may submit a petition in 2013.

1 (2) The defendant shall file the original petition with the
2 sentencing court. A copy of the petition shall be served on the
3 agency that prosecuted the case. The petition shall include the
4 defendant's statement that he or she was under 18 years of age at
5 the time of the crime, was sentenced to life in prison without the
6 possibility of parole, and that one of the following is true:

7 (A) The defendant was convicted pursuant to felony murder or
8 aiding and abetting murder provisions of law.

9 (B) The defendant does not have juvenile felony adjudications
10 for assault or other felony crimes with a significant potential for
11 personal harm to victims prior to the offense for which the sentence
12 is being considered for recall.

13 (C) The defendant committed the offense with at least one adult
14 codefendant.

15 (D) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or showing evidence of remorse.

21 (3) If any of the information required in paragraph (2) is missing
22 from the petition, or if proof of service on the prosecuting agency
23 is not provided, the court shall return the petition to the defendant
24 and advise the defendant that the matter cannot be considered
25 without the missing information.

26 (4) A reply to the petition, if any, shall be filed with the court
27 within 60 days of the date on which the prosecuting agency was
28 served with the petition, unless a continuance is granted for good
29 cause.

30 (5) If the court finds by a preponderance of the evidence that
31 the statements in the petition are true, the court shall hold a hearing
32 to consider whether to recall the sentence and commitment
33 previously ordered and to resentence the defendant in the same
34 manner as if the defendant had not previously been sentenced,
35 provided that the new sentence, if any, is not greater than the initial
36 sentence. Victims, or victim family members if the victim is
37 deceased, shall retain the rights to participate in the hearing.

38 (6) The factors that the court may consider when determining
39 whether to recall and resentence include, but are not limited to,
40 the following:

1 (A) The defendant was convicted pursuant to felony murder or
2 aiding and abetting murder provisions of law.

3 (B) The defendant does not have juvenile felony adjudications
4 for assault or other felony crimes with a significant potential for
5 personal harm to victims prior to the offense for which the sentence
6 is being considered for recall.

7 (C) The defendant committed the offense with at least one adult
8 codefendant.

9 (D) Prior to the offense for which the sentence is being
10 considered for recall, the defendant had insufficient adult support
11 or supervision and had suffered from psychological or physical
12 trauma, or significant stress.

13 (E) The defendant suffers from cognitive limitations due to
14 mental illness, developmental disabilities, or other factors that did
15 not constitute a defense, but influenced the defendant's
16 involvement in the offense.

17 (F) The defendant has performed acts that tend to indicate
18 rehabilitation or the potential for rehabilitation, including, but not
19 limited to, availing himself or herself of rehabilitative, educational,
20 or vocational programs, if those programs have been available at
21 his or her classification level and facility, using self-study for
22 self-improvement, or showing evidence of remorse.

23 (G) The defendant has maintained family ties or connections
24 with others through letter writing, calls, or visits, or has eliminated
25 contact with individuals outside of prison who are currently
26 involved with crime.

27 (H) The defendant has had no disciplinary actions for violent
28 activities in the last five years in which the defendant was
29 determined to be the aggressor.

30 (7) The court shall have the discretion to recall the sentence and
31 commitment previously ordered and to resentence the defendant
32 in the same manner as if the defendant had not previously been
33 sentenced, provided that the new sentence, if any, is not greater
34 than the initial sentence. The discretion of the court shall be
35 exercised in consideration of the criteria in paragraph (2). Victims,
36 or victim family members if the victim is deceased, shall be notified
37 of the resentencing hearing and shall retain their rights to
38 participate in the hearing.

39 (8) If the sentence is not recalled, the defendant may submit
40 another petition for recall and resentencing to the sentencing court

1 when the defendant has been committed to the custody of the
2 department for at least 15 years. If recall and resentencing is not
3 granted under that petition, the defendant may file another petition
4 after having served 20 years. If recall and resentencing is not
5 granted under that petition, the defendant may file another petition
6 after having served 24 years. The final petition may be submitted,
7 and the response to that petition shall be determined, during the
8 25th year of the defendant's sentence.

9 (9) In addition to the criteria in paragraph (2), the court may
10 consider any other criteria that the court deems relevant to its
11 decision, so long as the court identifies them on the record,
12 provides a statement of reasons for adopting them, and states why
13 the defendant does or does not satisfy the criteria.

14 (10) This subdivision shall have retroactive application.

15 (f) (1) Notwithstanding any other law and consistent with
16 paragraph (1) of subdivision (a), if the secretary or the Board of
17 Parole Hearings or both determine that a prisoner satisfies the
18 criteria set forth in paragraph (2), the secretary or the board may
19 recommend to the court that the prisoner's sentence be recalled.

20 (2) The court shall have the discretion to resentence or recall if
21 the court finds that the facts described in subparagraphs (A) and
22 (B) or subparagraphs (B) and (C) exist:

23 (A) The prisoner is terminally ill with an incurable condition
24 caused by an illness or disease that would produce death within
25 six months, as determined by a physician employed by the
26 department.

27 (B) The conditions under which the prisoner would be released
28 or receive treatment do not pose a threat to public safety.

29 (C) The prisoner is permanently medically incapacitated with
30 a medical condition that renders him or her permanently unable
31 to perform activities of basic daily living, and results in the prisoner
32 requiring 24-hour total care, including, but not limited to, coma,
33 persistent vegetative state, brain death, ventilator-dependency, loss
34 of control of muscular or neurological function, and that
35 incapacitation did not exist at the time of the original sentencing.

36 The Board of Parole Hearings shall make findings pursuant to
37 this subdivision before making a recommendation for resentence
38 or recall to the court. This subdivision does not apply to a prisoner
39 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by
2 the secretary or the board, the court shall hold a hearing to consider
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines
5 that a prisoner has six months or less to live shall notify the chief
6 medical officer of the prognosis. If the chief medical officer
7 concurs with the prognosis, he or she shall notify the warden.
8 Within 48 hours of receiving notification, the warden or the
9 warden's representative shall notify the prisoner of the recall and
10 resentencing procedures, and shall arrange for the prisoner to
11 designate a family member or other outside agent to be notified
12 as to the prisoner's medical condition and prognosis, and as to the
13 recall and resentencing procedures. If the inmate is deemed
14 mentally unfit, the warden or the warden's representative shall
15 contact the inmate's emergency contact and provide the information
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for recall and resentencing
26 by contacting the chief medical officer at the prison or the
27 secretary. Upon receipt of the request, the chief medical officer
28 and the warden or the warden's representative shall follow the
29 procedures described in paragraph (4). If the secretary determines
30 that the prisoner satisfies the criteria set forth in paragraph (2), the
31 secretary or board may recommend to the court that the prisoner's
32 sentence be recalled. The secretary shall submit a recommendation
33 for release within 30 days in the case of inmates sentenced to
34 determinate terms and, in the case of inmates sentenced to
35 indeterminate terms, the secretary shall make a recommendation
36 to the Board of Parole Hearings with respect to the inmates who
37 have applied under this section. The board shall consider this
38 information and make an independent judgment pursuant to
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by
4 the secretary or the Board of Parole Hearings shall include one or
5 more medical evaluations, a postrelease plan, and findings pursuant
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,
10 the prisoner shall be released by the department within 48 hours
11 of receipt of the court's order, unless a longer time period is agreed
12 to by the inmate. At the time of release, the warden or the warden's
13 representative shall ensure that the prisoner has each of the
14 following in his or her possession: a discharge medical summary,
15 full medical records, state identification, parole medications, and
16 all property belonging to the prisoner. After discharge, any
17 additional records shall be sent to the prisoner's forwarding
18 address.

19 (10) The secretary shall issue a directive to medical and
20 correctional staff employed by the department that details the
21 guidelines and procedures for initiating a recall and resentencing
22 procedure. The directive shall clearly state that any prisoner who
23 is given a prognosis of six months or less to live is eligible for
24 recall and resentencing consideration, and that recall and
25 resentencing procedures shall be initiated upon that prognosis.

26 (g) Any sentence imposed under this article shall be subject to
27 the provisions of Sections 3000 and 3057 and any other applicable
28 provisions of law.

29 (h) A sentence to state prison for a determinate term for which
30 only one term is specified, is a sentence to state prison under this
31 section.

32 (i) This section shall become operative on January 1, 2011.